No. 89-427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

INTERNATIONAL ASSOCIATION OF MACHINISTS and AEROSPACE WORKERS, AFL-CIO, *et al.*,
Petitioners,

v.

THE LONG ISLAND RAILROAD COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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AMTRAK'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the District Court abuse its discretion or make a clear mistake of law when it granted the Railroads' request for a preliminary injunction against a threatened sympathy strike by their employees upon a finding that there was a substantial likelihood that the strike would violate provisions of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.*?

2. Did the District Court abuse its discretion or commit a clear error when it preliminarily enjoined a threatened sympathy strike which would have arguably violated the collective bargaining agreement and thus raised a minor dispute subject to the arbitration procedures of the RLA?

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Respondent, National Railroad Passenger Corporation ("Amtrak"), respectfully requests that this Court deny the Petition for a Writ of Certiorari filed by the International Association of Machinists, *et al.*, ("the Unions") to review the decision of the United States Court of Appeals for the Second Circuit in *Long Island R.R. v. International Ass'n of Machinists*, 874 F.2d 901 (2d Cir. 1989).[1]

REASONS FOR DENYING THE PETITION

I. THERE IS NO CONFLICT IN THE CIRCUITS

Every court of appeals that has addressed the issue has decided that a sympathy strike that would arguably violate the collective bargaining agreement between a car-

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[1] Amtrak has no parent companies, subsidiaries that are not wholly owned, or affiliates to disclose pursuant to Rule 28.1.

rier and its employees must be enjoined pending exhaustion of the RLA's dispute resolution procedures. *See Long Island R.R. v. International Ass'n of Machinists*, 874 F.2d 901 (2d Cir. 1989) (decision below); *Southeastern Pa. Transportation Authority v. Brotherhood of R.R. Signalmen*, 882 F.2d 778 (3d Cir. 1989); *Trans International Airlines v. International Brotherhood of Teamsters*, 650 F.2d 949 (9th Cir. 1980), *cert. denied*, 449 U.S. 1110 (1981); *Northwest Airlines v. Air Line Pilots Ass'n*, 442 F.2d 246 (8th Cir. 1970), *aff'd on rehearing*, 442 F.2d 251 (8th Cir.), *cert. denied*, 404 U.S. 871 (1971).

Despite this consistency among the circuits, the Unions have made two different attempts to contrive a division. However, both are unavailing. First, they attempt to create a division by citing two court of appeals decisions that are inapposite to the issues in the present case. In *Eastern Air Lines v. Air Line Pilots Ass'n*, No. 89-5229 (11th Cir. March 24, 1989), the Eleventh Circuit did not decide whether a sympathy strike arguably in violation of a collective bargaining agreement could be enjoined. Rather, the court only determined that a sympathy strike could be enjoined if it were a pretext for premature self-help.[2] In *Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast Ry.*, 346 F.2d 673 (5th Cir. 1965), a railroad, whose employees were lawfully on strike, sought an injunction prohibiting employees of another employer from honoring the picket line and refusing to work on its cars. The struck employer had no contractual relationship with the employees of the secondary employer. Thus, the court of appeals was not presented with and expressly did not consider the issue of whether the secondary employer could have obtained

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[2] The Eleventh Circuit's opinion is unpublished. According to the court's Internal Operating Procedures, this treatment reflects the panel's belief that the opinion has "no precedential value." *See* Internal Operating Procedures of the United States Court of Appeals for the Eleventh Circuit, 36-1.3.

an injunction requiring its employees to comply with their collective bargaining agreements. Neither of the decisions proffered by the Unions support their assertion that there is a split in the circuits on the issue presented here: Can a court enjoin a sympathy strike because it arguably violates the employees' obligations under their collective bargaining agreements.

Second, apparently recognizing that the purported split in the circuits is more illusion than reality, the Unions take another tack. They attempt to devise a split by expanding the question presented beyond the issue of the enjoinability of sympathy strikes: "Whether federal courts have, in general, the authority to enter status quo injunctions, pending arbitration, against actions alleged to be in breach of an RLA collective bargaining agreement." Petition at i. To rationalize their creation, the Unions assert that the Second Circuit's decision was based on "the broader theory that the federal courts can, in general, issue a status quo injunction in any RLA 'minor dispute' . . . ." Petition at 7. They claim that on this issue "the Court of Appeals law is in disarray." *Id.* at 7-8. Significantly, the Unions offer no citation to the Second Circuit's opinion in support of these assertions. Nothing in that opinion even suggests that the Second Circuit relied on such a broad theory.

Having created the question, the petition then cites cases that can be read to evidence a conflict in the circuits on the question of when a federal court may enjoin a carrier, pending arbitration, from taking actions that arguably violate a collective bargaining agreement.[3] Petition

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[3] The cases cited by the Union were *Air Line Pilots Ass'n v. Eastern Air Lines*, 863 F.2d 891 (D.C. Cir. 1988); *International Ass'n of Machinists v. Eastern Air Lines*, 826 F.2d 1141 (1st Cir. 1987); *International Ass'n of Machinists v. Frontier Airlines*, 664 F.2d 538 (5th Cir. 1981); *United Transportation Union v. Burlington Northern, Inc.*, 458 F.2d 354 (8th Cir. 1972). In none of these cases was a court deciding whether a strike could be

at 12-13. While Amtrak believes this conflict is principally semantic, that is beside the point, because this new question is not presented by this case. The issue here concerns the propriety of enjoining, pending exhaustion of the RLA's dispute resolution procedures, a sympathy strike that arguably violates the employees' collective bargaining agreements. As noted above, the courts of appeals that have considered this issue are unanimous in concluding that such strikes must be enjoined to effectuate the purposes of the Act.

II. THE SECOND CIRCUIT'S DECISION IS CONSISTENT WITH SUPREME COURT PRECEDENT

The decision below was well grounded in then existing Supreme Court precedent. It has been further bolstered by the Court's subsequent decisions in *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, —— U.S. ——, 109 S.Ct. 2477 (1989) and *Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n*, —— U.S. ——, 109 S.Ct. 2584 (1989).

"In adopting the [RLA], Congress endeavored to bring about stable relationships between labor and management in this most important national industry." *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30, 40 (1957). The RLA's principal purpose was "to provide a machinery to avoid strikes." *Texas & New Orleans R.R. v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548, 565 (1930). To achieve this purpose, Congress established procedures by which disputes between a railroad and its employees are to be resolved. *See Consolidated Rail Corp.*, 109 S.Ct. at 2480-81. *See also, Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employees*, 481 U.S. 429, 444-45 (1987).

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enjoined. Significantly, both the First and Fifth Circuits recognized, in dicta, that a strike over a minor dispute can be enjoined. *Eastern Airlines*, 826 F.2d at 1149; *Frontier Airlines*, 664 F.2d at 542.

Generally categorized, RLA disputes are either major or minor.[4] "Major disputes seek to create contractual rights, minor disputes to enforce them." *Consolidated Rail Corp.*, 109 S.Ct. at 2480. A dispute is minor if the carrier's position "is arguably justified by the terms of the parties' collective bargaining agreement. Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major." *Id.* at 2482. The Act provides for major disputes to be resolved through negotiation and mediation, and for minor disputes to be resolved through arbitration. *Id.* at 2480-81; *Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711 (1945).

Submission of disputes to the Act's resolution procedures is not voluntary, but mandatory. *See* 45 U.S.C. § 152 First; *Chicago & North Western Ry. v. United Transportation Union*, 402 U.S. 570 (1971); *Chicago River*, 353 U.S. 30. Compliance with those procedures is enforceable by injunction notwithstanding the Norris-LaGuardia Act, 29 U.S.C. §§ 101 *et seq.*, because "the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act." *Chicago River*, 353 U.S. at 42; *Chicago & North Western Ry.*, 402 U.S. at 581-84. Thus, federal courts have jurisdiction to enjoin strikes arising out of minor disputes. *Consolidated Rail Corp.*, 109 S.Ct. at 2481; *Pittsburgh & Lake Erie R.R.*, 109 S.Ct. at 2598; *Chicago River*, 353 U.S. at 40-42.

In this case, the Second Circuit correctly applied these fundamental principles of RLA jurisprudence in determining that the district court had not abused its discre-

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[4] A third type of dispute, involving the representational status of the employer's workforce, is inapplicable to the present controversy. Furthermore, it is clear that strikes over representational disputes are similarly unlawful and may be enjoined. *See, e.g., Air Cargo, Inc. v. Local Union 851, International Brotherhood of Teamsters*, 733 F.2d 241 (2d Cir. 1984); *Summit Airlines v. Teamsters Local Union No. 295*, 628 F.2d 787 (2d Cir. 1980).

tion in issuing a preliminary injunction against a sympathy strike by Amtrak's employees. There was more than ample support for the conclusion that a sympathy strike would arguably violate the agreements between Amtrak and its unions and consequently, that it raised a minor dispute subject to the mandatory dispute resolution procedures of the RLA.[5] Therefore, a preliminary injunction was properly issued to enforce compliance with the specific procedures of the RLA.

The Unions attempt to avoid this result by arguments based on this Court's decisions in *Buffalo Forge Co. v. United Steel Workers*, 428 U.S. 397 (1976) and *Burlington Northern*, 481 U.S. 429. Not surprisingly, their reliance on *Buffalo Forge* is slight. Every court of appeals that has addressed the question has found the rationale of that case inapplicable to the RLA.[6] *Buffalo Forge* was decided under the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151 *et seq.*, which expresses "no general federal anti-strike policy." *Buffalo Forge*, 428 U.S. at 409. Conversely, the RLA's primary purpose is to prevent strikes. *See* 45 U.S.C. § 151a(1); *Detroit & Toledo Shore Line R.R. v. United Transportation Union*, 396 U.S. 142,

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[5] The agreements between Amtrak and its Unions require employees to report to work as assigned. Moreover, the agreements specify in detail "the circumstances under which employees are relieved of their obligation to report to work." App. at 47a-48a. Employees are also required to obtain permission from their supervisor for any absence. *Id.* Nothing in these agreements permits employees to be absent because they are "honor[ing] the picket lines of others and Amtrak has disciplined employees for engaging in illegal strike activity pursuant to these rules." *Id.*

[6] *See Long Island R.R. v. International Ass'n of Machinists*, 874 F.2d 901 (2d Cir. 1989) (decision below); *Trans International Airlines v. International Brotherhood of Teamsters*, 650 F.2d 949 (9th Cir. 1980), *cert. denied*, 449 U.S. 1110 (1981); *Southeastern Pa. Transportation Authority v. Brotherhood of R.R. Signalmen*, 882 F.2d 778 (3d Cir. 1989); *Northwest Airlines v. Air Line Pilots Ass'n*, 442 F.2d 246 (8th Cir. 1970), *aff'd on rehearing*, 442 F.2d 251 (8th Cir.), *cert. denied*, 404 U.S. 871 (1971).

148 n.13 (1969); *Chicago River*, 353 U.S. at 37-39. Moreover, the NLRA does not require employers and unions to arbitrate contractual disputes, while the RLA specifically compels arbitration of such disputes. Therefore, under the NLRA, when a sympathy strike arguably would violate a collective bargaining agreement, there is no statutory obligation that could take precedence over the Norris-LaGuardia Act. In contrast, under the RLA, an injunction must issue against such a strike to enforce the statutory arbitration requirement. 353 U.S. at 40-42. As Justice Kennedy wrote while on the Ninth Circuit:

> The requirement of arbitration under the RLA is an essential part of the congressional purpose of avoiding interruption of the transportation industry. The minor dispute arbitration procedure was designed as a substitute for prearbitration strikes and we think this includes sympathy strikes [that arguably violate the collective bargaining agreement].

Trans International Airlines, 650 F.2d at 966. (citations omitted).

In a last effort to support their position, the Unions argue that the Second Circuit's decision is inconsistent with *Burlington Northern*. This assertion cannot survive scrutiny. In *Burlington Northern*, the Court held that the RLA does not prohibit employees who have exhausted the Act's bargaining procedures with their own employer from picketing other carriers. The decision did not release the employees of the secondary carriers from *their* contractual obligations. Indeed, the Court specifically found that Section 2 First of the RLA, 45 U.S.C. § 152 First, requires compliance with those obligations:

> [T]he RLA requires all parties both "to exert every reasonable effort to make and maintain" collectively bargained agreements and to abide by the terms of the most recent collective bargaining agreement until all the settlement procedures provided by the RLA have been exhausted.

481 U.S. at 445 (citations omitted). Nothing in the decision supports the Unions' position, which is, in essence, that exhaustion of the Act's procedures by employees of one company serves to release the employees at all of the other air and rail carriers in the country from their contractual and statutory commitments.[7]

Nor does *Burlington Northern* provide any support for the Unions' argument that the Second Circuit's decision is in effect a return to *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921). Indeed, it is the Unions who are invoking the discredited *Duplex Printing* approach by espousing a "general intuition about the political and economic significance" of sympathy strikes. *See Burlington Northern*, 481 U.S. at 438. The Unions point to nothing in the RLA or the collective bargaining agreements that supports their asserted "right" to engage in a sympathy strike. Instead, they argue that the strike should not have been enjoined because the injunction renders the strike by *Eastern's employees* less effective. The Unions would have the Court ignore the contractual commitments of *Amtrak's employees*, as well as their statutory obligation to abide by those commitments, 45 U.S.C. § 152 First, in order to strengthen the economic and political position of *Eastern's employees*. Such a decision would be contrary to this Court's analysis in *Burlington Northern*, as well as every other decision of the Court addressing the lawfulness of strikes under the RLA.

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[7] In *Brotherhood of R.R. Signalmen v. Southeastern Pa. Transportation Authority*, A-715 (Circuit Justice Brennan 1989), Justice Brennan refused to stay an injunction against a sympathy strike by SEPTA's employees during the Eastern Airlines dispute, stating it was unlikely that four justices would find the issue worthy of *certiorari*. This is particularly noteworthy given that Justice Brennan authored *Burlington Northern*.

CONCLUSION

Because the circuits are not split on the issues raised by this case and the Second Circuit's decision is fully supported by the precedent of this Court, Amtrak respectfully requests that the Court deny the petition for a writ of certiorari.

Respectfully submitted,

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